

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

DISTRICT OF NH

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Sensa Verogna, Plaintiff,)
v.) Case #: 1:20-cv-00536-SM
Twitter Inc., Defendant.)

PLAINTIFF'S RULE 5.1 MOTION AND MOL CHALLENGING THE
CONSTITUTIONALITY OF TITLE 47 U.S. CODE § 230

1. The "Plaintiff", proceeding anonymously as Sensa Verogna, challenges the Constitutionality of Title 47 U.S. Code § 230 and submits that he has proper standing [See Doc. 1], and that such relief will further clarify any uncertainty as to the United States' culpability or liability through respondeat superior, through its policing partner Twitter, or other, or is Twitter alone liable for violations of the Plaintiff's Rights. The relief sought will also alert, narrow down or clarify issues effecting both current parties. See *Komorowski v. Boston Store*, 263 Ill. App. 88, 93-96 (1931). (recovery may be permitted against the client of a private police agency, even though the service contract specifically provided that the agency would assume full responsibility for the private police operations).

Congress: “We want you to stop censoring speech”

Big Tech: We are only doing what YOU told us too!

30 2. In part, Congress, lacks authority under Article I,
31 Section 8 of the Constitution' as it regulates speech without the
32 due process of laws and violates Plaintiff's and other U.S. and
33 New Hampshire Citizens' Constitutional rights under Articles [I],
34 [V] and [XIV] of the Constitution, and Part I, Article 22 of the
35 New Hampshire Constitution and because the President must
36 preserve, protect, and defend the Constitution it also requires
37 the President to disregard unconstitutional statutes.

38 3. Venue is proper as stated in [Doc.1, at Paragraphs 8, 9
39 and10]. Plaintiff re-alleges and incorporates by reference each
40 paragraph, tweet, article, exhibit or attachments on the "Docket"
41 or "Doc.", as though set forth fully herein.

42 4. Plaintiff has noticed, within 28 U.S. Code § 2403 and
43 Fed. R. C. P. Rule 5.1, the United States Attorney General,
44 Honorable William P. Barr, by certified mail to the U.S.
45 Department of Justice, 950 Pennsylvania Avenue, NW Washington, DC
46 20530-0001, and states support thereof within the attached
47 Memorandum of Law, "MOL", which contains no more than 13,000
48 words, uses a monospaced faced font and contains less than 1,300
49 lines and within Fed. R C.P., Rule, 32(a) (7) (B). Plaintiff's
50 questions are:

51 A. Is §230 unconstitutional because it abridges free
52 speech?

53 B. Is §230 unconstitutional because it contains
54 content-based restrictions?

55 C. Does §230 regulate speech without providing for
56 due process of law?

57 D. Does §230 impermissibly violate the nondelegation
58 doctrine and the separation of powers by placing exercise powers
59 traditionally reserved to the State to a private entity?

60 E. Does §230 violate a citizens' First Amendment rights
61 under the U.S. Constitution or the New Hampshire Constitution.

62 F. Did Congress lack authority under the Commerce Act
63 because §230 is criminal in nature or that it is purely non-
64 economic?

65 G. Does §230 impermissibly violate the nondelegation
66 doctrine and the separation of powers by placing exercise powers
67 traditionally reserved to the State to a private entity?

68 H. Does §230 encroach on States' policing powers to
69 regulate free speech.

70 I. Is §230 unconstitutional because it is too narrowly
71 drawn, vague or too broad as (1) it fails to provide people of
72 ordinary intelligence a reasonable opportunity to understand what
73 conduct it prohibits; (2) it authorizes or even encourages
74 arbitrary and discriminatory enforcement.

75 J. Does §230 provide explicit standards to prevent
76 arbitrary or discriminatory enforcement for those who apply it?

77 K. Are there less restrictive means available, therefore
78 making §230 unconstitutional?

79

80 WHEREFORE, Plaintiff invites this Court and the United States
81 Attorney General to stop the oppression of American's free speech
82 in public forums and find Title 47 U.S. Code § 230 unconstitutional
83 under both the U.S. Constitution and the Constitution of the State
84 of New Hampshire.

85

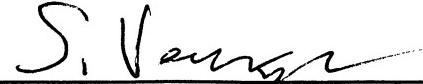
86 Respectfully,

87

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89

90

91 
92 /s/ Plaintiff, Anonymously as Sensa Verogna
93 SensaVerogna@gmail.com

94

95 CERTIFICATE OF SERVICE

96 I hereby certify that on this 6th day of August 2020, the
97 foregoing document was made upon the Defendant, through its
98 attorneys of record to Jonathan M. Eck jeck@orr-reno.com and
99 Julie E. Schwartz, Esq., JSchwartz@perkinscoie.com, and to the
100 United States Attorney General as noted above.

101

102

103

104 I declare under penalty of perjury that the foregoing is true and
105 correct. Signed this 6th day of August 2020 in the State of
106 New Hampshire.

107

108

109

110 
111 /s/ Anonymously as Sensa Verogna
112 SensaVerogna@gmail.com

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW HAMPSHIRE
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4 Plaintiff Verogna, Plaintiff,)
5 v.) Case #: 1:20-cv-00536-SM
6 Twitter Inc., Defendant.)
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10 PLAINTIFF'S MOTION IN SUPPORT OF PLAINTIFF'S RULE 5.1 MOTION
11 TO DECLARE TITLE 47 U.S. CODE §230 UNCONSTITUTIONAL UNDER LAW
12

13 1. Congress, under the Commerce Act unlawfully,
14 unreasonably and contrary to law, exceeded its constitutional
15 bounds granted by the U.S. Constitution Article I, section 8, by
16 enacting Title 47 U.S. Code "§230". As stated by one of its authors
17 Senator Ron Wyden (D-Oregon), §230 "creates a government kind of
18 information police—censorship, information police." §230 was, at
19 least publicly, designed to give regular citizens a voice to be
20 heard, but instead has disastrously caused the opposite and given
21 the powerful even more power to oppress citizens free speech in
22 public or private forums.

23 2. Congress's §230 Encouragement Provision threatens to
24 stifle the free exchange of ideas online under the First amendment
25 about one of the most contentious and important political questions
26 of our time. *United States v. Williams*, 553 U.S. 285, 293 (2008)
27 Such a result is antithetical to our nation's unique and profound
28 commitment to the protection of speech. *New York Times v. Sullivan*,
29 376 U.S. at 270 (1964) The history of the law of free expression

30 is one of vindication in cases involving speech that many citizens
31 may find shabby, offensive, or even ugly. It follows that all
32 content-based restrictions on speech must give us more than a
33 moment's pause. §230 does not meet the burden the First Amendment
34 imposes. *United States v. Playboy Entertainment Group, Inc.* 98-
35 1682) 529 U.S. 803 (2000) 30 F. Supp. 2d 702, affirmed.

36 3. Congress has historically engaged in oversight of the
37 executive branch. The government delegates the operation of one of
38 its traditional and quintessential functions to private
39 individuals or groups are endowed by the State with powers or
40 functions governmental in nature and become agencies or
41 instrumentalities in fact, and that the government delegates some
42 portion of [its] power to private [actors] does not change the
43 governmental character of the power exercised. Conspicuously
44 missing from any debates concerning §230 passage were any of the
45 fundamental criticisms of private policing characterized by the La
46 Follette or Homestead investigations. Absent were questions about
47 the "delegation of the sovereign power of the State to private
48 hands." Incredibly, no one had asked before whether the thousands
49 of private screeners conducting searches in public space or forums
50 ought to be public or private. Scandals involving private police
51 are numerous. For a discussion of examples, see SOUTH, *supra* note
52 53, at 100-03. For a recent example, see William Wan & Erin Ail
53 worth, *Street Vendors Allege Extortion*, L.A. TIMES, May 18, 2004,

54 at B 1 (reporting allegations by street vendors that guards
55 employed by Los Angeles business improvement district extorted
56 money from them).

57 4. §230 lacks the precision that the First Amendment
58 requires when a statute regulates the content of speech. In order
59 to deter hateful or harmful speech, §230 effectively suppresses
60 large amounts of speech that adults have a constitutional right to
61 speak, receive and to address to one another. Further, the
62 interests §230 proclaims to satisfy, does not justify an
63 unnecessarily broad suppression of speech addressed to adults. The
64 most glaring defect of §230 is the blatant disregard for
65 Constitutional Free Speech in violation of Plaintiff's First
66 Amendment rights as it instructs interactive computer services to
67 restrict access to materials even if "such material is
68 constitutionally protected" or "otherwise objectionable" which on
69 its face is unconstitutional under the First Amendment and Article
70 22.

71 5. §230 is not a valid exercise of Congress' commerce powers
72 as public speech or the criminal nature of speech are entirely
73 noneconomic. Similarly, true threats or inciteful crimes of speech
74 are not, economic activity and are more aptly to be governed by
75 State or local Criminal laws. The economic necessities outlined in
76 §230 should not provide cover for government-supported
77 infringements of speech as exchanging ideas is free and no money

78 is exchanged. Additionally, the "crimes" of "Free Speech" that
79 §230 seeks to sensor and punish are addressed, or could be readily
80 addressed within criminal statutes by numerous Federal, State and
81 Local Authorities, which in turn would provide Due Process to its
82 Citizens.

83 6. A congressional enactment such as §230 can be
84 invalidated upon a plain showing that Congress has exceeded its
85 constitutional bounds. *United States v. Lopez*, 514 U.S. 549, 568,
86 577-578. In our federal system, the National Government possesses
87 only limited powers; the States and the people retain the
88 remainder. The Federal Government "can exercise only the powers
89 granted to it.

90 Section §230

91 7. Findings by Congress found that the Internet and other
92 interactive computer services have flourished... with a minimum of
93 government regulation and offer a forum for a true diversity of
94 political discourse and Increasingly Americans are relying on
95 interactive media for a variety of political, educational,
96 cultural, and entertainment services. (§230(a)). 47 U.S. Code §230
97 - Protection for private blocking and screening of offensive
98 material).

99 8. Congress then promulgated within §230(b), United States
100 policy intended to promote the Internet, (b)(1), preserve a
101 competitive free market unfettered by Federal or State regulation,

102 (b) (2), empower parents to restrict their children's access to
103 objectionable or inappropriate online material, (b) (4), and to
104 ensure vigorous enforcement of Federal criminal laws to deter and
105 punish trafficking in obscenity, stalking, and harassment by means
106 of computer. (b) (5).

107 9. Congress implemented protections under §230(c)(2)(A),
108 which states, in part:

110 Civil liability No provider or user of an interactive
111 computer service shall be held liable on account of—
112 (A) any action voluntarily taken in good faith to restrict
113 access to or availability of material that the provider or
114 user considers to be obscene, lewd, lascivious, filthy,
115 excessively violent, harassing, or otherwise objectionable,
116 whether or not such material is constitutionally protected;

117 10. §230 (e) titled, "Effect on other laws", states, in
118 part:

120 (3) STATE LAW. Nothing in this section shall be construed
121 to prevent any State from enforcing any State law that is
122 consistent with this section. No cause of action may be
123 brought and no liability may be imposed under any State or
124 local law that is inconsistent with this section.

125 11. Congress, through §230(d) then placed only 1 obligation
126 upon interactive computer services to "notify such customer that
127 parental control protections (such as computer hardware, software,
128 or filtering services) are commercially available that may assist
129 the customer in limiting access to material that is harmful to
130 minors."

132 12. §230 has 3 basic components, "indecent materials" [5]
133 (which includes speech), §230(c)(2)(A); "vigorous enforcement"
134 §230(b)(5); and Executive police authority with and "safe harbors"

135 for private police. [5] Indecent materials is describe as,
136 "material that the provider or user considers to be obscene, lewd,
137 lascivious, filthy, excessively violent, harassing, or otherwise
138 objectionable, whether or not such material is constitutionally
139 protected"

140 13. Lexico powered by Oxford' describes materials prohibited
141 by §230

142 Obscene; (of the portrayal or description of sexual matters)
143 offensive or disgusting by accepted standards of morality and
144 decency. Offensive to moral principles; repugnant. Synonyms;
145 'using animals' skins for fur coats is obscene' pornographic,
146 indecent, salacious, smutty, X-rated, lewd, rude, dirty, filthy,
147 vulgar, foul, coarse, crude, gross, vile, nasty, disgusting,
148 offensive, shameless, immoral, improper, immodest, impure,
149 indecorous, indelicate, unwholesome, scabrous, off color,
150 lubricious, risqué, ribald, bawdy, suggestive, titillating, racy,
151 erotic, carnal, sensual, sexy, lascivious, lecherous, licentious,
152 libidinous, goatish, degenerate, depraved, amoral, debauched,
153 dissolute, prurient.

154 Lewd; Crude and offensive in a sexual way. 'she began to gyrate to
155 the music and sing a lewd song'. Synonyms; pornographic, indecent,
156 salacious, smutty, X-rated, lewd, rude, dirty, filthy, vulgar,
157 foul, coarse, crude, gross, vile, nasty, disgusting, offensive,
158 shameless, immoral, improper, immodest, impure, indecorous,

159 indelicate, unwholesome, scabrous, off color, lubricious, risqué,
160 ribald, bawdy, suggestive, titillating, racy, erotic, carnal,
161 sensual, sexy, lascivious, lecherous, licentious, libidinous,
162 goatish, degenerate, depraved, amoral, debauched, dissolute,
163 prurient: Opposite: pure, decent offensive to moral principles;
164 repugnant. "using animals' skins for fur coats is obscene"
165 Lascivious (of a person, manner, or gesture) feeling or revealing
166 an overt and often offensive sexual desire. "he gave her a
167 lascivious wink". Synonyms; lecherous, lewd, lustful, licentious,
168 libidinous, goatish, salacious, wanton, lubricious, prurient,
169 dirty, smutty, filthy, naughty, suggestive, indecent, ribald.
170 Filthy; 1Disgustingly dirty. 'a filthy hospital with no
171 sanitation' 1.1Obscene and offensive. Synonyms; 'filthy language'
172 obscene, indecent, dirty, smutty, rude, improper, corrupt, coarse,
173 bawdy, unrefined, indelicate, vulgar, lewd, racy, raw, off color,
174 earthy, ribald, risqué, licentious.
175 Excessively violent: Excessive; More than is necessary, normal, or
176 desirable; immoderate. 'he was drinking excessive amounts of
177 brandy'. Synonyms; immoderate, intemperate, imprudent,
178 overindulgent, unrestrained, unrestricted, uncontrolled,
179 uncurbed, unbridled, lavish, extravagant, exorbitant,
180 extortionate, unreasonable, outrageous, undue, uncalled for,
181 extreme, inordinate, unwarranted, unnecessary, needless,
182 disproportionate, too much.

183 Violent; Using or involving physical force intended to hurt,
184 damage, or kill someone or something. 'a violent confrontation
185 with riot police'. Synonyms; brutal, vicious, savage, harsh,
186 rough, aggressive, bullying, threatening, terrorizing, fierce,
187 wild, intemperate, hot-headed, hot-tempered, bloodthirsty,
188 ferocious, berserk, frenzied, powerful, forceful, hard, sharp,
189 smart, strong, vigorous, mighty, hefty, harsh, thunderous, savage,
190 ferocious, fierce, brutal, vicious, destructive, damaging,
191 painful.

192 Harassing; Harass; 1Subject to aggressive pressure or
193 intimidation. 'being harassed at work can leave you feeling
194 confused and helpless'. 1.1Make repeated small-scale attacks on
195 (an enemy) 'the squadron's task was to harass the retreating enemy
196 forces'. Synonyms; pester, badger, hound, harry, plague, torment,
197 bedevil, persecute, bother, annoy, exasperate, worry, disturb,
198 trouble, agitate, provoke, vex.

199 objectionable; Arousing distaste or opposition; unpleasant or
200 offensive. 'I find his theory objectionable in its racist
201 undertones'. Synonyms; offensive, unpleasant, disagreeable,
202 distasteful, displeasing, unacceptable, off-putting, undesirable,
203 obnoxious.

204 Commerce Powers

205 14. U.S. Constitution. Article I, section 8 specifically
206 provides that "Congress shall have the power to lay and collect

207 taxes, duties, imposts and excises, to pay debts and provide for
208 the common defense and general welfare of the United States."

209 15. The enumerated powers of Congress, particularly the
210 Commerce Clause, historically have been interpreted expansively.
211 *Wickard v. Filburn*, 317 U.S. 111 (1942), (interpreting the Commerce
212 Clause as providing Congress with broad powers to regulate).

213 16. The Constitution authorizes Congress to "regulate
214 Commerce with foreign Nations, and among the several States, and
215 with the Indian Tribes." Art. I, §8, cl. 3. Precedents read that
216 to mean that Congress may regulate "the channels of interstate
217 commerce," "persons or things in interstate commerce," and "those
218 activities that substantially affect interstate commerce."
219 *Morrison*, *supra*, at 609 (quotation marks omitted). *Perez v. United*
220 *States*, 402 U. S. 146 (1971)

221 17. The Supreme Court has identified three broad categories
222 of activity that Congress may regulate under its commerce power.
223 *Perez v. United States*, *supra*, at 150; see also *Hodel v. Virginia*
224 *Surface Mining & Reclamation Assn.*, *supra*, at 276-277. First,
225 Congress may regulate the use of the channels of interstate
226 commerce. *Darby*, 312 U. S., at 114; *Heart of Atlanta Motel*, *supra*,
227 at 256 ("`[T]he authority of Congress to keep the channels of
228 interstate commerce free from immoral and injurious uses has been
229 frequently sustained, and is no longer open to question.''"
230 (quoting *Caminetti v. United States*, 242 U.S. 470, 491 (1917))

231 Second, Congress is empowered to regulate and protect the
232 instrumentalities of interstate commerce, or persons or things in
233 interstate commerce, even though the threat may come only from
234 intrastate activities. *Shreveport Rate Cases*, 234 U.S. 342 (1914);
235 *Southern R. Co. v. United States*, 222 U.S. 20 (1911) (upholding
236 amendments to Safety Appliance Act as applied to vehicles used in
237 intrastate commerce); *Perez*, *supra*, at 150 ("[F]or example, the
238 destruction of an aircraft (18 U.S.C. § 32), or . . . thefts from
239 interstate shipments (18 U.S.C. § 659)"). Finally, Congress'
240 commerce authority includes the power to regulate those activities
241 having a substantial relation to interstate commerce, *Jones &*
242 *Laughlin Steel*, 301 U. S., at 37, i.e., those activities that
243 substantially affect interstate commerce. *Wirtz*, *supra*, at 196, n.
244 27. The *Perez* Court concluded that, "consistent with the great
245 weight of our case law, that the proper test requires an analysis
246 of whether the regulated activity "substantially affects"
247 interstate commerce." Justice Breyer focused, for the most part,
248 on the threat that firearm possession in and near schools poses to
249 the educational process and the potential economic consequences
250 flowing from that threat. *Post*, at 5-9. See also, *United States v.*
251 *Morrison*, 18 Const. Comment. 563, 567 (2002) *Id.* at 558
252 (identifying "three broad categories of activity that Congress may
253 regulate under its commerce power"), *Id.* at 558-59 (stating that
254 the instrumentality part of the *Lopez* three-part framework also

255 authorizes regulation to "protect . . . persons or things in
256 interstate commerce").

257 18. Supporters of §230 would argue that; (1) adverse speech
258 in a Public Forum is a serious problem; (2) that problem, in turn,
259 has an adverse effect on internet growth; and (3) that adverse
260 effect on internet growth, in turn, represents a substantial threat
261 to trade and commerce. Under this rationale, Congress could just
262 as easily looked at adverse speech as "fall[ing] on the commercial
263 side of the line" because it provides a "valuable service--namely,
264 to equip [computer networks] with the tools they need to remove
265 "perceived" adverse speech in public or private forums. And
266 although Congress has authority under the Commerce Clause to
267 regulate numerous commercial activities that substantially affect
268 interstate commerce and also affect commercial speech. That
269 authority, though broad, does not include the authority to regulate
270 each and every aspect of free speech as §230 does. "The [federal]
271 government is acknowledged by all to be one of enumerated powers.
272 The principle, that it can exercise only the powers granted to it
273 . . . is now universally admitted. But the question respecting the
274 extent of the powers actually granted, is perpetually arising, and
275 will probably continue to arise, as long as our system shall
276 exist." *Id.*, at 405. As in *Lopez*, the Court here should find that
277 §230 suppresses free speech which are purely local activities and
278 should be beyond the reach of federal power. *Id.*, at 598.

279 19. §230 is directed at the personal users and not the
280 computer network itself. In this case, §230 sides with Twitter's
281 belief of quality of free speech and not quantity of free speech
282 is what rules and is one of the many reasons §230 is
283 unconstitutional.

284 A. Is §230 unconstitutional because it abridges free speech?

285 20. "Th[e First] [A]mendment, then, we may take it for
286 granted, does not forbid the abridging of speech. But, at the same
287 time, it does forbid the abridging of the freedom of speech." Gertz
288 v. Robert Welch, Inc., 418 U.S. 323, 382 (1974) §230 places a
289 content-based blanket restriction on speech and abridges the
290 freedom of speech in allowing and permitting that free speech be
291 regulated by private companies. Reno v. American Civil Liberties
292 Union, 521 U.S. 844 (1997) (holding that the CDA's "indecent
293 transmission" and "patently offensive display" provisions abridge
294 "the freedom of speech" protected by the First Amendment. Pp. 864-
295 885.

296 21. John Morris, former Commerce Department's National
297 Telecommunications and Information Administration stated before
298 leaving, "the government should not try to impose speech
299 regulations on private platforms. As politicians from both sides
300 of the political spectrum have historically urged, the government
301 should not be in the business of regulating speech." FTC
302 Commissioner Noah Phillips said the FTC's antitrust and consumer

303 protection authorities are "not authorities to police the First
304 Amendment itself." Plaintiff argues that Congress is already in
305 the business of regulating speech through §230 as it has already
306 interpreted what speech is indecent and which speech is not. The
307 problem with §230 is that no objective standards exist for what
308 constitutes "indecent" speech and seeks to regulate speech based
309 on its substantive content, a goal that is anathema to the First
310 Amendment.

311 22. Certain categories of speech are completely unprotected
312 by the First Amendment. That list includes (i) child pornography,
313 (ii) obscenity, and (iii) "fighting words" or "true threats."
314 "[f]ree public expression cannot be burdened with governmental
315 predictions or assessments of what a discrete populace will think
316 about good or bad 'taste.'" *Stanton by Stanton v. Brunswick School*
317 *Dept.*, 577 F. Supp. 1560 , 1572, 1574 (D. Me. 1984) It is clear
318 that §230 is overbroad. both on its face and as applied and clearly
319 abridges free speech because the indecent materials it seeks to
320 exclude, could be a very many things.

321 23. It is firmly settled that under our Constitution the
322 public expression of ideas may not be prohibited merely because
323 the ideas are themselves offensive to some of their hearers. *Cox*
324 *v. Louisiana (I)*, [379 U.S. 536 [85 S. Ct. 453, 13 L. Ed. 2d 471]
325 (1965)]; *Edwards v. South Carolina*, [372 U.S. 229, 83 S. Ct. 680,
326 9 L. Ed. 2d 697 (1963)]; *Terminiello v. Chicago*, [337 U.S. 1, 69

327 S. Ct. 894, 93 L. Ed. 1131 (1949)]; cf. *Cantwell v.*
328 *Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940);
329 *Doe v. University of Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989).
330 The Constitution protects both elegant and vulgar speech because
331 "a society can be truly strong only when it is truly free.",
332 *Ginzburg v. United States*, 383 U.S. 463, 498 (Stewart, J.,
333 dissenting) Censorship of speech and expression, even unpopular
334 ones, only "reflects a society's lack of confidence in itself. It
335 is a hallmark of an authoritarian regime." Id.

336 24. In *Marsh v. Alabama*, 326 U.S. 501 (1946), the United
337 States Supreme Court held that the individual right to distribute
338 literature enjoyed a "preferred position" under the First
339 Amendment, and that private ownership was immaterial because
340 Chickasaw served a "public function" and had "all the
341 characteristics of any other American town." And that "Marsh and
342 the shopping-center cases clearly establish that some private
343 properties fulfill public functions amenable to constitutional
344 protection," For example, the Minnesota Supreme Court in *Abbariao*
345 *v. Hamline University School of Law* noted that "[t]he requirements
346 imposed by the common law on private universities parallel those
347 imposed by the due process clause on public universities.", 258
348 N.W.2d 108, 113 (Minn. 1977). New York's highest court was among
349 the courts to apply *Abbariao* favorably in *Tedeschi v. Wagner Coll.*,
350 404 N.E.2d 1302, 1305 (N.Y. 1980).

351 25. In *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992),
352 Justice Antonin Scalia explained that by singling out "specified
353 disfavored topics," the City Council had engaged in content-based
354 and viewpoint discrimination that failed to satisfy strict
355 scrutiny. "The mere fact that expressive activity causes hurt
356 feelings, offense, or resentment does not render the expression
357 unprotected."

358 26. In *UWM Post v. Board of Regents of the University of*
359 *Wisconsin*, Plaintiffs argued that the UW Rule had overbreadth
360 difficulties because it was a content-based rule which regulates
361 a substantial amount of protected speech. The court ruled
362 unconstitutional a policy prohibiting speech that: "Demean[s] the
363 race, sex, religion, color, creed, disability, sexual orientation,
364 national origin, ancestry or age of the individual or individuals;
365 [and]... [c]reate[s] an intimidating, hostile or demeaning
366 environment for education, university related work, or other
367 university-authorized activity." In striking down the code, the
368 court ruled that "the suppression of speech, even where the
369 speech's content appears to have little value and great costs,
370 amounts to governmental thought control." 774 F. Supp. 1163 (E.D.
371 Wis. 1991).

372 27. In *Police Department of Chicago v. Mosley*, the Supreme
373 Court explained the great import of protecting speech from content-
374 based regulation. [A]bove all else, the First Amendment means that

375 government has no power to restrict expression because of its
376 message, its ideas, its subject matter, or its content. To permit
377 the continued building of our politics and culture, and to assure
378 self-fulfillment for each individual, our people are guaranteed
379 the right to express any thought, free from government censorship.
380 The essence of this forbidden censorship is content control. Any
381 restriction on expressive activity because of its content would
382 completely undercut the "profound national commitment to the
383 principle that debate on public issues should be uninhibited,
384 robust, and wide-open." 408 U.S. 92, 95-96 (1972) (citations
385 omitted). These categories of speech are considered to be of such
386 slight social value that any benefit that may be derived from them
387 is clearly outweighed by their costs to order and morality.
388 *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). The
389 categories include fighting words, obscenity and, to a limited
390 extent, libel. *Collin v. Smith*, 578 F.2d 1197, 1202 (7th Cir.1978),
391 cert. denied, 439 U.S. 916 (1978)

392 28. In Bair v. Shippensburg University, the district court
393 found Shippensburg University's speech code, which stated that
394 "[t]he expression of one's beliefs should be communicated in a
395 manner that does not provoke, harass, intimidate or harm another,"
396 to be in violation of the First Amendment. In finding the school's
397 code unconstitutional, the court held that "regulations that
398 prohibit speech on the basis of listener reaction alone are

399 unconstitutional both in the public high school and university
400 settings," and further noted that not even codes that attempt to
401 ban so-called "fighting words" pass constitutional muster. 280 F.
402 Supp. 2d 357 (M.D. Pa. 2003) In *College Republicans at San*
403 *Francisco State University v. Reed*, the Court issued a preliminary
404 injunction barring SFSU and other schools in the California State
405 University system from enforcing several challenged policies,
406 including a requirement that students "be civil to one another"
407 and act in accordance with SFSU's "goals, principles, and
408 policies." Judge Brazil also limited the CSU system's ability to
409 enforce a policy prohibiting "intimidation" and "harassment,"
410 holding that the policy could only be applied to conduct that
411 "reasonably is concluded to threaten or endanger the health or
412 safety of any other person." 523 F. Supp. 2d 1005 (N.D. Cal. 2007).
413 In *Smith v. Tarrant County College District*, a federal district
414 court found restrictions on symbolic speech on campus maintained
415 by Tarrant County College (TCC) to be unconstitutional. The court
416 found that TCC's reliance on a policy prohibiting "disruptive
417 activities" to restrict students from holding an "empty holster"
418 protest violated the First Amendment. The court further ruled that
419 TCC's sweeping prohibition on "cosponsorship," which forbade
420 students and faculty from holding campus events in association
421 with any "off-campus person or organization," prevented TCC
422 students "from speaking on campus on issues of any social

423 importance" and was therefore "overly broad" and "unconstitutional
424 on its face." 694 F. Supp. 2d 610 (N.D. Tex. 2010)

425 29. §230's "indecent materials" provisions abridges "the
426 freedom of speech" protected by the First Amendment. As demonstrate
427 in paragraph 13, the words or expressions allow could possibly
428 mean a lot of things... to a lot of different people. Is a lascivious
429 wink indecent? Looking at the plain language of §230, it is simply
430 impossible to discern any limitation on its scope or any conceptual
431 distinction between protected and unprotected conduct.

432 30. §230 is also facially overbroad because a substantial
433 number of its applications such as removing speech "taken in good
434 faith" and speech "otherwise objectionable" are unconstitutional
435 and viewpoint discriminatory on their face because it fails to
436 provide people of ordinary intelligence a reasonable opportunity
437 to understand what conduct it prohibits and it authorizes or even
438 encourages arbitrary and discriminatory enforcement.

439 31. Even assuming §230 has a plainly legitimate sweep that
440 targets obscene, lewd, lascivious, filthy, excessively violent,
441 harassing, the regulation can be used to censor any expression or
442 word that is critical, negative, or controversial or is capable of
443 a critical, negative, or controversial interpretation regardless
444 of whether it constitutes an accusation of moral turpitude or
445 whether the speech is "constitutionally protected or not".

446 B. Is §230 unconstitutional because it contains content-based
447 restrictions?

448 32. The Supreme Court has recognized several different types
449 of laws that restrict speech, and subjects each type of law to a
450 different level of scrutiny. Content-based restrictions "are
451 presumptively unconstitutional regardless of the government's
452 benign motive, content-neutral justification, or lack of animus
453 toward the ideas contained in the regulated speech." *Sable*
454 *Communications v. FCC*, 492 U.S. 115 (1989). In *Police Department*
455 *of Chicago v. Mosley* (1972) Justice Thurgood Marshall wrote for
456 the Court that "the First Amendment means that government has no
457 power to restrict expression because of its message, its ideas,
458 its subject matter, or its content."

459 33. Core political speech is the most highly guarded form of
460 speech because of it's purely expressive nature and its importance
461 to a functional republic. Restrictions or regulations that require
462 examining the content of speech to be applied must pass strict
463 scrutiny. *Sable*

464 34. §230 is a content-based speech restriction and cannot
465 satisfy strict scrutiny. *Sable* §230 is content based because it
466 restricts communication because of the message conveyed and thus,
467 regulates speech based on its content which regulates a substantial
468 amount of protected speech exceeding any unprotected speech such

469 as, (i) child pornography, (ii) obscenity, and (iii) "fighting
470 words" or "true threats."

471 C. Does §230 regulate speech without providing for due process
472 of law?

473 35. §230 violates the Fifth Amendment Due Process Clause by
474 [v]esting the coercive police power of the government in Twitter,
475 an interested private part[y]. Dep't of Transp. v. Ass'n of Am.
476 Railroads, 575 U.S. (2015)

477 36. §230 violates Article III, Section 2 as it does not
478 provides for the right to trial by jury in all criminal cases, and
479 the requirement that the trial be held in the state where the crime
480 was committed.

481 37. §230 prohibits the freedom of speech under the U.S.
482 Constitution Article [I] Freedom of expression and the Due Process
483 and Equal Protections clauses within Articles [IV] and [XIV] and
484 allows these freedoms to be regulated in a discriminatory manner.

485 D. Does §230 impermissibly violate the nondelegation doctrine
486 and the separation of powers by placing exercise powers
487 traditionally reserved to the State to a private entity?

488 38. The Supremacy Clause provides that federal law "shall be
489 the supreme Law of the Land; and the Judges in every State shall
490 be bound thereby, anything in the Constitution or Laws of any State
491 to the Contrary notwithstanding." Art. VI, cl. 2. Under this
492 principle, Congress has the power to preempt state law. Crosby v.

493 National Foreign Trade Council, 530 U.S. 363, 372, 120 S.Ct. 2288,
494 147 L.Ed.2d 352 (2000) However, in considering whether a state
495 statute is preempted, "courts should assume that 'the historic
496 police powers of the States' are not superseded 'unless that was
497 the clear and manifest purpose of Congress.' " *Arizona v. United*
498 *States*, U.S., 132 S.Ct. 2492, 2501, 183 L.Ed.2d 351 (2012) (quoting
499 *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146,
500 91 L.Ed. 1447 (1947); citing *Wyeth v. Levine*, 555 U.S. 555, 565,
501 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009)) The Tenth Amendment makes
502 explicit that states preserve some realm of exclusive sovereignty,
503 stating, "The powers not delegated to the United States by the
504 Constitution, nor prohibited by it to the States, are reserved to
505 the States respectively, or to the people." U.S. CONST. amend. X.
506 §230 does not override, due to the content of its provisions,
507 section 22 and is a provision that makes certain amendments either
508 more difficult or impossible to pass, making such amendments
509 inadmissible. §230 should not override Article 22 of the NH
510 Constitution.

511 39. To determine whether the contract violated Part I,
512 Article 22 of the New Hampshire Constitution, two questions must
513 be answered: (1) What type of forum is the arena; and (2) Can the
514 challenged restriction survive the constitutional scrutiny
515 appropriate to the regulation of expression in that type of forum.
516 *Multimedia Pub. v. Greenville-Spartanburg Airport*, 991 F.2d 154,

517 158 (4th Cir. 1993); Cornelius v. NAACP Legal Defense Ed. Fund,
518 473 U.S. 788, 797 (1985). An entrenched clause or entrenchment
519 clause of a basic law or constitution is a provision that makes
520 certain amendments either more difficult or impossible to pass,
521 making such amendments inadmissible. Overriding an entrenched
522 clause may require a supermajority, a referendum, or the consent
523 of the minority party. Congress subbed out the Executive's job to
524 private police and therefore usurped the Judicial remedies
525 available to Citizens such as due process. Section 22 of the New
526 Hampshire Constitution protects free and political speech, which
527 is reasonably exercised, on platforms even when the platforms are
528 privately owned.

529 40. The Supremacy Clause does not independently grant any
530 power to the federal government. Instead, the Supremacy Clause,
531 and the doctrine of federal preemption that arises from it, is
532 essentially a choice-of-law provision, stating that where valid
533 federal and state and local laws are in conflict, the federal laws
534 prevail. The clause itself makes clear that federal law is supreme
535 only when those laws are made "in pursuance" of the Constitution
536 and "under the authority of the United States." U.S. CONST., Art.
537 VI, cl. 2., Printz v. U.S., 521 U.S. 898, 924-25 (1997) (noting
538 that the validity of a federal law is a prerequisite for
539 application of the Supremacy Clause).

540 41. §230 does not meet the constitutional imperative of
541 "separation of powers" that invests the power to prosecute solely
542 in the executive branch and not to private owners of public forums
543 such as Twitter. In the American system, the parties "frame the
544 issues for decision" while the courts take the role of "neutral
545 arbiter of matters the parties present.", *Greenlaw v. United*
546 *States*, 554 U.S. 237, 243 (2008)

547 42. §230 violates the nondelegation doctrine and the
548 separation of powers principle by placing policing powers and
549 executive authority in the hands of a private entity [Twitter]
550 that participates in the very industry. *Dep't of Transp. v. Ass'n*
551 *of Am. Railroads*, 575 U.S. 176 177 (2015) Speech that incites is
552 more aptly to be governed by State Criminal laws.

553 E. Does §230 violate a citizens' First Amendment rights under
554 the U.S. Constitution or the New Hampshire Constitution.

555
556 Constitutional Rights

557 43. Articles under the U.S. Constitution

558 Article [I] (Amendment 1 - Freedom of expression and
559 religion)

560 Congress shall make no law respecting an establishment
561 of religion, or prohibiting the free exercise thereof;
562 or abridging the freedom of speech, or of the press; or
563 the right of the people peaceably to assemble, and to
564 petition the Government for a redress of grievances.

565 Article [V] (Amendment 5 - Rights of Persons)

566 No person shall be held to answer for a capital, or
567 otherwise infamous crime, unless on a presentment
568 or indictment of a Grand Jury, except in cases arising
569 in the land or naval forces, or in the Militia, when in
570 actual service in time of War or public danger; nor shall
571 any person be subject for the same offence to be twice
572 put in jeopardy of life or limb; nor shall be compelled
573 in any criminal case to be a witness against himself,
574 nor be deprived of life, liberty, or property, without
575 due process of law; nor shall private property be taken
576 for public use, without just compensation.

577 Article [XIV] (Amendment 14 - Rights Guaranteed: Privileges
578 and Immunities of Citizenship, Due Process, and Equal Protection)

579 1: No State shall make or enforce any law which shall
580 abridge the privileges or immunities of citizens of the
581 United States; nor shall any State deprive any person of
582 life, liberty, or property, without due process of law;
583 nor deny to any person within its jurisdiction the equal
584 protection of the laws.

585 44. The First Amendment guarantees freedoms concerning
586 religion, expression, assembly, and the right to petition. It
587 guarantees freedom of expression by prohibiting Congress from
588 restricting the rights of individuals to speak freely.

589 45. The Fifth Amendment of the US Constitution creates a
590 number of rights relevant to civil legal proceedings and requires
591 that "due process of law" be part of any proceeding that denies a
592 citizen "life, liberty or property", which §230 does not.

593 46. As the Supreme Court has recognized, the Internet is
594 where people "engage in a wide array of protected First Amendment
595 activity on topics as diverse as human thought." *Packingham v.*
596 *North Carolina*, 137 S. Ct. 1730, 1735-36 (2017)

597 47. "The freedom of speech and of the press, and the right
598 of the people peaceably to assemble and consult for their common
599 good, and to apply to the government for redress of grievances,
600 shall not be infringed." *ANNALS OF CONGRESS* 434 (1789) Madison had
601 also proposed language limiting the power of the states in a number
602 of respects, including a guarantee of freedom of the press. *Id.* at
603 435. Although passed by the House, the amendment was defeated by
604 the Senate. "Amendments to the Constitution, Bill of Rights and
605 the States," *supra*. 377 *Id.* at 731 (August 15, 1789)

606 48. The Due Process Clause of the Fourteenth Amendment
607 applies only against the states, but it is otherwise textually
608 identical to the Due Process Clause of the Fifth Amendment, which
609 applies against the federal government; both clauses have been
610 interpreted to encompass identical doctrines of procedural due
611 process and substantive due process. Procedural due process is the
612 guarantee of a fair legal process when the government tries to
613 interfere with a person's protected interests in life, liberty, or
614 property, and substantive due process is the guarantee that the
615 fundamental rights of citizens will not be encroached on by
616 government. The Due Process Clause of the Fourteenth Amendment
617 also incorporates most of the provisions in the Bill of Rights,
618 which were originally applied against only the federal government,
619 and applies them against the states.

620 49. While expressions in public may be regulated in a
621 nondiscriminatory manner, expression cannot be prohibited. "The
622 privilege of a citizen of the United States to use the streets and
623 parks for communication of views on national questions may be
624 regulated in the interest of all. It is not absolute, but relative,
625 and must be exercised in subordination to the general comfort and
626 convenience, and in consonance with peace and good order; but it
627 must not, in the guise of regulation, be abridged or denied."
628 Freedom of speech and of assembly for any lawful purpose are rights
629 of personal liberty secured to all persons, without regard to
630 citizenship, by the due process clause of the Fourteenth Amendment.
631 P. 307 U. S. 519. *Hague v. Committee for Industrial Organization*,
632 307 U.S. 496 (1939)

633 50. The Due Process Clause of the Fourteenth Amendment
634 provides: "[N]or shall any State deprive any person of life,
635 liberty, or property, without due process of law." In 1883, in *The*
636 *Supreme Court in the Civil Rights Cases*, 109 U.S. 3, affirmed the
637 essential dichotomy set forth in that Amendment between
638 deprivation by the State, subject to scrutiny under its provisions,
639 and private conduct, "however discriminatory or wrongful," against
640 which the Fourteenth Amendment offers no shield. *Shelley v.*
641 *Kraemer*, 334 U.S. 1 (1948)

642 51. Given the prevalence of balancing tests in free speech
643 case law and adjudication of other constitutional rights,

644 -inviolably carries strong implications. Unless -inviolably in
645 Article 22 is surplusage, the term elevates speech and press above
646 other interests. Where the right to free speech is weighed against
647 other rights or interests, the presumption ought to thus be
648 strongly in favor of free speech. This is not to say that the
649 rights in Article 22 should be read as absolutes—rather, once the
650 general extent of protected activity is understood, it should not
651 be readily circum-scribed. KEITH WERHAN, FREEDOM OF SPEECH: A
652 REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION 78–79 (2004)
653 (outlining free speech analysis under the First Amendment and
654 describing different levels of scrutiny), e.g., *Alonzi v.*
655 Northeast Generation Servs. Co., 156 N.H. 656, 662, 940 A.2d 1153,
656 1159 (2008) (describing levels of scrutiny applicable to equal
657 protection challenges).

658 52. Part 1, Bill of Rights, of the New Hampshire State
659 Constitution states;

660 [Art.] 22. [Free Speech; Liberty of the Press.] Free
661 speech and Liberty of the press are essential to the
662 security of Freedom in a State: They ought, therefore,
663 to be inviolably preserved.

664 June 2, 1784, Amended 1968 to include free speech..

665 [Art.] 32. [Rights of Assembly, Instruction, and
666 Petition.] The People have a right, in an orderly and
667 peaceable manner, to assemble and consult upon the
668 common good, give instructions to their
669 Representatives, and to request of the legislative
670 body, by way of petition or remonstrance, redress of
671 the wrongs done them, and of the grievances they
672 suffer.

673 June 2, 1784

674 53. Part I, Article 22 of the New Hampshire Constitution
675 provides: "Free speech and liberty of the press which are
676 inviolably preserved." Similarly, the First Amendment prevents the
677 passage of laws "abridging the freedom of speech." U.S. CONST.
678 amend. I. It applies to the states through the Fourteenth Amendment
679 to the United States Constitution. *Lovell v. Griffin*, 303 U.S.
680 444, 450 (1938)

681 54. State action jurisprudence, even in its most restrictive
682 interpretations, re-quires that constitutional protections apply
683 in federally related §230 actions in the same manner as they apply
684 when such actions are pursued by Congress. A level playing field
685 for parties in this limited dual-enforcement system is
686 constitutionally mandated.

687 55. Today, there are still no New Hampshire Supreme Court
688 opinions indicating that free speech rights under Article 22 are
689 stronger than under the First Amendment, but the door remains open.
690 *Opinion of the Justices*, 121 N.H. 434, 436, 430 A.2d 191, 193
691 (1981) (indicating that -the New Hampshire Constitution guarantees
692 the same right to free speech and association as the First
693 Amendment in the context of campaign contribution restrictions).

694 56. Our inquiry into whether the speech at issue is protected
695 by the First Amendment is straightforward. The individual
696 plaintiffs seek to engage in political speech, Stip. ¶¶ 46-52, and
697 such "speech on matters of public concern" "fall within the core

698 of First Amendment protection," *Engquist v. Ore. Dep't of Agric.*,
699 553 U.S. 591, 600, 128 S.Ct. 2146, 170 L.Ed.2d 975 (2008)

700 57. §230 restricts the right of individuals to speak freely
701 in public forums and violates freedom of speech rights under Part
702 I, Article 22 of the New Hampshire Constitution which are
703 inviolably preserved for New Hampshire Citizens and should not be
704 subject to encroachment by any new regulations.

705 F. Did Congress lack authority under the Commerce Act
706 because §230 is criminal in nature or that it is purely non-
707 economic?

708 58. The criminal nature of hate speech is noneconomic,
709 similarly, inciteful crimes of speech are not, in any sense,
710 economic activity. *United States v. Morrison*, 529 U.S. 598 (2000)

711 59. Due respect for the decisions of a coordinate branch of
712 Government demands that we invalidate a congressional enactment
713 only upon a plain showing that Congress has exceeded its
714 constitutional bounds. *United States v. Lopez*, 514 U.S., at 568,
715 577–578 (Kennedy, J., concurring) Lopez emphasized, however, that
716 even under our modern, expansive interpretation of the Commerce
717 Clause, Congress' regulatory authority is not without effective
718 bounds. *Id.*, at 557. ““a criminal statute that by its terms has
719 nothing to do with ‘commerce’ or any sort of economic enterprise,
720 however broadly one might define those terms.” *Id.*, at 561. *United*
721 *States v. Morrison*, 529 U.S. 598, 610 (2000), (Finding that gender-

722 based crime is not an economic activity "in any sense of the
723 phrase.) United States v. McFarland, 311 F.3d 376, 396-97 (5th
724 Cir. 2002) (en banc) (concluding that robbery is not a commercial
725 activity even though it has an "economic effect").

726 60. A court may invalidate legislation enacted under the
727 Commerce Clause only if it is clear that there is no rational basis
728 for a congressional finding that there is no reasonable connection
729 between the regulatory means selected and the asserted
730 ends." Hodel v. Indiana, 452 U.S. 314, 323-24 (1981). Moreover,
731 "[t]he pertinent inquiry therefore is not how much commerce is
732 involved but whether Congress could rationally conclude that the
733 regulated activity affects interstate commerce." 452 U.S. at 324.
734 §230 is the equivalent of a Federal law that stipulates what a
735 newspaper could print and not print. A congressional enactment can
736 be invalidated upon a plain showing that Congress has exceeded its
737 constitutional bounds. United States v. Lopez, 514 U.S. 549, 568,
738 577-578.

739 61. Various exercises of federal power have been held to be
740 beyond the scope of the power granted to the federal government by
741 the Constitution. U.S. v. Morrison, 529 U.S. 598 (2000) (striking
742 down parts of the Violence Against Women Act of 1994 as exceeding
743 Congress' authority under the Commerce Clause); National
744 Federation of Independent Businesses v. Sebelius, 132 S.Ct. 2566
745 (2012) (striking down a portion of the Affordable Care Act that

746 would have significantly expanded Medicaid as being an
747 impermissibly coercive and therefore invalid exercise of Congress'
748 spending power); U.S. v. Lopez, 514 U.S. 549 (1995) (striking down
749 the Gun Free School Zones Act of 1990 as exceeding Congress'
750 authority under the Commerce Clause). Similar to *Morrison*, the
751 Court should invalidate §230 because it creates a federal cause of
752 action for speech that is inciteful or harassing. Inciteful speech
753 is not, in any sense of the phrase, economic activity and contains
754 no jurisdictional element tying the inciteful speech to interstate
755 commerce. Accepting the reasoning that Congress can regulate
756 speech, would eliminate the distinction between what is truly
757 national and what is truly local, and would allow Congress to
758 regulate virtually any activity, and basically any crime.

759 62. In *National Federation of Independent Business (NFIB) v.*
760 *Sebelius*, Chief Justice Roberts, in a controlling opinion,
761 suggested that Congress's authority to regulate interstate
762 commerce presupposes the existence of a commercial activity to
763 regulate. 567 U.S. ___, No. 11-393, slip op. (2012). Suppression
764 or oppression of an individual's speech in public places and
765 individual mandate upon citizens to speak as you are instructed,
766 or you won't be allowed to speak in public. Further there are zero
767 facts to support Congress's conclusion that speech in public has
768 ties to any interstate commerce, economic or otherwise. U.S. at
769 252-53; *Katzenbach v. McClung*, 379 U.S. 294, 299-301

770 (1964). Accordingly, the Court "reject[ed] the argument that
771 Congress may regulate noneconomic, violent criminal conduct based
772 solely on that conduct's aggregate effect on interstate commerce."
773 Resurrecting the dual federalism dichotomy, the Court could find
774 "no better example of the police power, which the Founders denied
775 the National Government and reposed in the States, than the
776 suppression of violent crime and vindication of its victims.

777 63. Congress, under any Commerce act or regulation, lacks
778 the authority to regulate and/or suppress noneconomic speech,
779 criminal speech or criminal conduct through §230 based solely on
780 that conduct's aggregate effect on interstate commerce as police
781 powers lie within the States and not with the Federal Government.
782 When applied, §230 creates a substantial expansion of federal
783 authority to regulate persons not otherwise subject to such
784 regulation.

785 G. Does §230 impermissibly violate the nondelegation
786 doctrine and the separation of powers by placing exercise powers
787 traditionally reserved to the State to a private entity?

788 64. §230(e) 3 violates the anti-commandeering principle in
789 that Congress cannot simply commandeer and dictate state laws in
790 pursuit of federal legislative goals pertaining to or regarding
791 any computer network's liability while removing indecent materials
792 from their network. In both *Reno v. Condon*, 528 U.S. 141, 120 S.
793 Ct. 666, 145 L. Ed. 2d 587, (2000) *Reno v. Condon* and *Coyle v.*

794 Smith, 221 U.S. 559 (1911) held that the anti-commandeering
795 analysis turned not on whether the federal law required an
796 affirmative act, but instead on whether the federal law controlled
797 or influenced how states govern. New Hampshire or any other State
798 do not have any realistic options to enact statutes which would
799 hold accountable any computer network for violations to its
800 Citizens. §230(e) 3 is also a compulsion that it bans States from
801 imposing liability upon computer networks who remove materials
802 from their networks inconsistent with §230 and thus violative of
803 the principles of federalism. §230 unconstitutionally abridges
804 free speech rights and exercises "powers traditionally exclusively
805 reserved to the State." Jackson v. Metropolitan Edison Co., 419 U.
806 S. 345, 352. (1974)

807 65. "State sovereignty is not just an end in itself: Rather,
808 federalism secures to citizens the liberties that derive from the
809 diffusion of sovereign power." New York v. United States, 505 U.
810 S. 144, 181 (1992) (internal quotation marks omitted). Because the
811 police power is controlled by 50 different States instead of one
812 national sovereign, the facets of governing that touch on citizens'
813 daily lives are normally administered by smaller governments
814 closer to the governed. The Framers thus ensured that powers which
815 "in the ordinary course of affairs, concern the lives, liberties,
816 and properties of the people" were held by governments more local
817 and more accountable than a distant federal bureaucracy.

818 66. In passing §230, Congress voided any State Legislative
819 duties to protect its citizens' free speech from computer networks
820 who remove materials from their computer network. The legislative
821 duties are therefore usurped by §230(e) 3 and with it the Judicial
822 remedies and due processes available to Citizens for violations of
823 State Constitutions or other State or common law claims against
824 computer networks. What if the State Legislators determined that
825 computer networks are Public Forums and therefore must obey free
826 speech and freedom assembly rights, and then decided to hold
827 accountable any computer network responsible for such actions
828 either criminally or civil? It couldn't with §230 standing in the
829 way. §230 in fact influences how States govern and protect their
830 Citizens freedom of speech.

831 H. Does §230 encroach on States' policing powers to
832 regulate free speech.

833 67. Non-enumerated powers, known generally as "police
834 power," remain with the states. *Nat'l Fed'n of Indep. Bus. v.
835 Sebelius*, 132 S. Ct. 2566, 2587-91, 2644 (2012) (finding the
836 individual mandate beyond the Commerce Clause authority on that
837 ground).

838 68. The imposition of penalties are quintessential
839 government functions. Congress reserved for itself the decision as
840 to whether what was fair speech Congress removed that decision
841 from the sphere of private choice. This encouragement, endorsement

842 and participation in the private activity created state action
843 exercising a delegated public function subject to constitutional
844 limitations. In democratic societies, police are accountable to
845 the courts, and to elected legislatures and executives. See Jerome
846 H. Skolnick, *Policing*, in **INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL**
847 & BEHAVIORAL SCIENCES 11535 (2001).

848 69. In passing §230, the legislature overrode the
849 entrenchment clause under Part I, Article 22 of the New Hampshire
850 Constitution and the due process rights that accompany it without
851 any type of strict scrutiny which would have examined restrictions
852 or regulations with regard to content of speech prior to it passing
853 into law. (Congressional Records) Part I, Article 22 of the New
854 Hampshire Constitution protects Plaintiff's free and political
855 speech, which was reasonably exercised, in public forums even when
856 the forums are privately owned.

857 70. The mere invocation of federal power by a federal law
858 enforcement official will normally render futile any attempt to
859 resist an unlawful entry or arrest by resort to the local police;
860 and a claim of authority to enter is likely to unlock the door as
861 well. *Weeks v. United States*, 232 U.S. 383, 386, 34 S.Ct. 341,
862 342, 58 L.Ed. 652 (1914); *Amos v. United States*, supra. In such
863 cases as this, there is no safety for Citizens when Twitter acts
864 as judge, jury and executioner when it deletes free political
865 speech and restricts entry into its Public Forum, except in the

866 protection of the judicial tribunals, for rights which have been
867 invaded by actors claiming authority and professing they are acting
868 in the name of the government. [But] one who demands admission
869 under a claim of federal authority stands in a far different
870 position. Cf. *Amos v. United States*, 255 U.S. 313, 317, 41 S.Ct.
871 266, 267-268, 65 L.Ed. 654 (1921)

872 71. Congress has exceeded its constitutional bounds in
873 passing §230 as in our federal system, the National Government
874 possesses only limited powers where the States and the people
875 retain the remainder. Police power, such as punishing street crime,
876 regulating speech or behavior is possessed by the States and not
877 by the Federal Government.

878 72. Because the police power is controlled by 50 different
879 States instead of one national sovereign, the facets of governing
880 that touch on citizens' daily lives are normally administered by
881 smaller governments closer to the governed. The Framers thus
882 ensured that powers which "in the ordinary course of affairs,
883 concern the lives, liberties, and properties of the people" were
884 held by governments more local and more accountable than a distant
885 federal bureaucracy. "Whether termed 'traditional,' 'exclusive,'
886 or 'significant, the State's delegation of that power to a
887 private party is, accordingly, subject to due process scrutiny."
888 *Flagg Bros. v. Brooks*, 436 U.S. 149, 176 (1978) (Stevens, J.,
889 dissenting). Delegation or allocation. The state action doctrine

890 should therefore focus not on the actor's status (official or
891 private) but on the actor's function. Because the state cannot
892 abdicate its responsibility for the allocation of legitimate
893 force,⁵⁰Joh, supra note 2, at 359-60 ("Whether it encourages by
894 inaction, or discourages through legislation and public critique,
895 the state is always implicated in the development of private
896 policing.").

897 73. By definition, the state monopolizes "legitimate
898 coercion" in a civilization. LES JOHNSTON, THE REBIRTH OF PRIVATE
899 POLICING 218 (1992) (*emphasis added*) ; see also PASTOR, supra note
900 4, at 40 ("The legitimacy of government, particularly regarding
901 the use of force and of powers of arrest, had a deep-seated
902 historical premise.")

903 74. Private police can perform some of the "dirty work" that
904 the public police cannot--either because private police are less
905 likely to be caught in illegal behavior, or because public police
906 are legally prohibited from acting in ways that private police are
907 not.--- See Gary Marx, The Interweaving of Public and Private
908 Police in Undercover Work, in PRIVATE POLICING, supra note 104, at
909 172, 183.¹⁴⁰¹⁴⁰ Id.; see also Joh, supra note 14, at 115-17 (describing
910 consequences of "dirty work" model). Private police
911 systems, on the other hand, are created to meet the economic needs
912 and desires of private interests. They are paid from private funds
913 and act as the agents and servitors of their employers, who occupy

914 their positions by virtue of their ownership of property or as
915 appointed agents of stockholders or owners Private police
916 systems, therefore, cannot be viewed as agencies of law and order.
917 S. REP. No. 76-6, pt. 2, at 2 (1939)

918 75. Public police rely on the criminal law with its neutral,
919 universal, and uniform criteria-as a source of legitimacy. See
920 Albert Reiss, Jr. The Legitimacy of Intrusion into Private Space,
921 in PRIVATE POLICING 19, 26 (Clifford D. Shearing & Philip C.
922 Stenning eds., 1982) A management model stresses efficiency and
923 goal-achievement, whereas a governance model takes into account
924 broader goals of integrity, the accommodation of interests, and
925 morality.

926 76. When prevention fails, however, private police often can
927 turn to a third means: private justice systems. See Stuart Henry,
928 Private Justice and the Policing of Labor: The Dialectics of
929 Industrial Discipline, in PRIVATE POLICING, supra note 69, at 45-
930 46 (defining private justice as "localized nonstate systems of
931 administering and sanctioning individuals accused of rule breaking
932 or disputing within groups or organizations"). (Banishment,
933 according to the authors, isn't dead. In fact, it's reemerging as
934 a significant form of official punishment. The reason it hasn't
935 been recognized widely is that it doesn't come packaged as
936 "punishment," or even "banishment," for that matter.

937 77. This reemergence of banishment should matter to criminal
938 law scholars for a number of reasons. First, it turns out that
939 these civil alternatives are too often a backdoor to the criminal
940 justice system. While each of the forms of banishment studied in
941 Seattle is classified as civil, violations of park exclusion
942 orders, trespass admonishments, and off-limits orders are criminal
943 offenses. Note too that because the initial orders are civil, an
944 individual subject to, say, a parks exclusion order receives
945 nothing like the procedural protections that a conventional
946 criminal defendant does. (In Seattle, the police may exclude a
947 person from a public park without providing any evidence of
948 wrongdoing.) The effects of the orders can be considerable; large
949 swaths of the city can be designated as forbidden to the banished
950 person. Banishment tools may seem to city officials and the police
951 like a clear cut method to rid a city of unwanted behaviors, but
952 from the viewpoint of those on the receiving end of these orders,
953 banishment can be a separation from things, places, and persons
954 that individuals hold most dear.

955 78. As noted above, in passing §230, Congress voided any
956 States' discussion of whether computer networks may be liable for
957 their actions and thus §230 escaped any type of strict scrutiny in
958 which the States could examine restrictions or regulations with
959 regard to content of speech, and the possibility of criminal or
960 civil penalties for computer networks that violate such enacted

961 laws for those who violate it. If State Legislators believed that
962 speech in New Hampshire should be "inviolably preserved" and wanted
963 to pass criminal laws for computer networks who impeded or who
964 penalizes its citizens for their free speech in public places or
965 forums, or if State legislators didn't like the fact that their
966 Citizens' inviolable free speech rights in public places or forums
967 were being decided by biased, anti-white private police located in
968 foreign countries, or if they oppose computer networks who hire
969 private police who use artificial intelligence practices which
970 include "surveillance discretion", [1], automated decision making
971 and targeting by racial or other discriminatory reasons. If State
972 Legislators wanted to hold computer networks to a higher standard
973 [2], §230 would impede such legislation and its power to police
974 these activities within any particular State. Lastly, you wouldn't
975 hear about most abuses, unless you are well known, because all
976 these policing actions taken by private police, would be private
977 and not in public view.

978

979 [1] See Elizabeth E. Joh, The New Surveillance Discretion: Automated Suspicion, Big
980 Data, and Policing, 10 Harvard L. & Pol'y Review 15 (2016).

981 [2] The Association for Computing Machinery defines algorithmic accountability with this
982 principle: "Institutions should be held responsible for decisions made by the algorithms
983 that they use, even if it is not feasible to explain in detail how the algorithms produce
984 their results." ACM U.S. PUBLIC POLICY COUNCIL, STATEMENT ON ALGORITHMIC TRANSPARENCY
985 AND ACCOUNTABILITY 2 (Jan. 12, 2017)

986

987

988 I. Is §230 unconstitutional because it is too narrowly
989 drawn, vague or too broad as (1) it fails to provide people of
990 ordinary intelligence a reasonable opportunity to understand what
991 conduct it prohibits; (2) it authorizes or even encourages
992 arbitrary and discriminatory enforcement.

993 79. "Because First Amendment freedoms need breathing space
994 to survive, government may regulate in the area only with narrow
995 specificity." NAACP v. Button, 371 U.S. 4151 433 (1963). It is
996 fundamental that statutes regulating First Amendment activities
997 must be narrowly drawn to address only the specific evil at
998 hand. *Broadrick v. Oklahoma*, 413 U.S. 601, 611, 93 S. Ct. 2908,
999 2915, 37 L. Ed. 2d 830 (1973). A law regulating speech will be
1000 deemed overbroad if it sweeps within its ambit a substantial amount
1001 of protected speech along with that which it may legitimately
1002 regulate. *Id.* 413 U.S. at 612, 93 S. Ct. at 2915; *Houston v.*
1003 *Hill*, 482 U.S. 451, 458-60, 107 S. Ct. 2502, 2507-08, 96 L. Ed. 2d
1004 398 (1985); *Kolender v. Lawson*, 461 U.S. 352, 359 n. 8, 103 S. Ct.
1005 1855, 1859 n. 8, 75 L. Ed. 2d 903 (1983); *Gooding v. Wilson*, 405
1006 U.S. 518, 521-22, 92 S. Ct. 1103, 1105-06, 31 L. Ed. 2d 408 (1972).

1007 80. A statute is unconstitutionally vague when "men of
1008 common intelligence must necessarily guess at its
1009 meaning." *Broadrick v. Oklahoma*, 413 U.S. 603, 607 (1973). A
1010 statute must give adequate warning of the conduct which is to be
1011 prohibited and must set out explicit standards for those who apply

1012 it. Id. These concerns apply with particular force where the
1013 challenged statute affects First Amendment rights. *Village of*
1014 *Hoffmann Estates v. The Flipside*, Hoffmann Estates, Inc., 455 U.S.
1015 489, 499 (1982).

1016 81. The vagueness doctrine, "originally a due process
1017 doctrine, applies when the statutory language is unclear, and is
1018 concerned with notice to the potential wrongdoer and prevention of
1019 arbitrary or discriminatory enforcement." Lambert, 446 F. Supp.
1020 at 897 ; see also State v. MacElman, 154 N.H. 304, 307 (2006)
1021 (explaining that vagueness may invalidate a statute for either of
1022 two independent reasons: (1) it fails to provide people of ordinary
1023 intelligence a reasonable opportunity to understand what conduct
1024 it prohibits; or (2) it authorizes or even encourages arbitrary
1025 and discriminatory enforcement). "A vague law impermissibly
1026 delegates basic policy matters to policemen, judges, and juries
1027 for resolution on an ad hoc and subjective basis, with the
1028 attendant dangers of arbitrary and discriminatory application."
1029 *Grayned v. City of Rockford*, 408 U.S. 104 , 108-09 (1972). "The
1030 absence of clear standards guiding the discretion of the public
1031 official vested with the authority to enforce the enactment invites
1032 abuse by enabling the official to administer the policy on the
1033 basis of impermissible factors." *United Food v. Southwest Ohio*
1034 *Regional Transit*, 163 F.3d 341 , 359 (6th Cir. 1998). Thus, the
1035 vagueness doctrine serves to "[rein] in the discretion of

1036 enforcement officers." Act Now to Stop War, 905 F. Supp. 2d at
1037 330. When First Amendment interests are at stake, "[c]ourts apply
1038 the vagueness doctrine with special exactitude." Id. 351. "Without
1039 such standards, every application of the regulation creates an
1040 impermissible risk of suppression of ideas." Id. (quotation
1041 omitted). "[T]his principle applies with as much force to civil
1042 statutes as it does to criminal laws." Id. *In Dambrot v. Central*
1043 *Michigan University*, the first speech code case decided by a
1044 federal appellate court. The challenged speech code was a
1045 discriminatory harassment policy which defined racial and ethnic
1046 harassment as "any intentional, unintentional, physical, verbal,
1047 or nonverbal behavior that subjects an individual to an
1048 intimidating, hostile or offensive educational, employment or
1049 living environment by . . . demeaning or slurring individuals . .
1050 . or . . . using symbols, [epithets] or slogans that infer negative
1051 connotations about the individual's racial or ethnic affiliation."
1052 As with the first two speech code cases, the Sixth Circuit found
1053 the policy to be both unconstitutionally vague and overbroad. The
1054 Court stated, "It is clear from the text of the policy that
1055 language or writing, intentional or unintentional, regardless of
1056 political value, can be prohibited upon the initiative of the
1057 university." Additionally, responding to the university's argument
1058 that the policy only prohibited fighting words, the Sixth Circuit
1059 held that, even assuming this argument to be true, "the CMU policy

1060 constitutes content discrimination because it necessarily requires
1061 the university to assess the racial or ethnic content of the
1062 speech." As such, the policy was unconstitutional on its face, 55
1063 F.3d 1177 (6th Cir. 1995).

1064 82. The Supreme Court has consistently held that statutes
1065 punishing speech or conduct solely on the grounds that they are
1066 unseemly, or offensive are unconstitutionally overbroad. In
1067 *Houston v. Hill*, *supra*, the Supreme Court struck down a City of
1068 Houston ordinance which provided that "[i]t shall be unlawful for
1069 any person to assault or strike or in any manner oppose, molest,
1070 and abuse or interrupt any policeman in the execution of his duty."
1071 The Supreme Court also found that the ordinance was overbroad
1072 because it forbade citizens from criticizing and insulting police
1073 officers, although such conduct was constitutionally protected.
1074 *Id.* 482 U.S. at 460-65, 107 S. Ct. at 2508-10. The fact that the
1075 statute also had a legitimate scope of application in prohibiting
1076 conduct which was clearly unprotected by the First Amendment was
1077 not enough to save it. In *Gooding v. Wilson*, *supra*, the Supreme
1078 Court struck down a Georgia statute which made it a misdemeanor
1079 for "[a]ny person [to], without provocation, use to or of another,
1080 and in his presence ... opprobrious words or abusive language,
1081 tending to cause a breach of the peace." The Supreme Court found
1082 that this statute was overbroad as well, because it punished speech
1083 which did not rise to the level of "fighting words," as defined in

1084 || Chaplinsky v. New Hampshire, *supra*. The Supreme Court struck down
1085 || a similar ordinance in *Lewis v. New Orleans*, 415 U.S. 130, 94 S.
1086 || Ct. 970, 39 L. Ed. 2d 214 (1974), on the same grounds. In *Papish*
1087 || *v. University of Missouri*, 410 U.S. 667, 93 S. Ct. 1197, 35 L. Ed.
1088 || 2d 618 (1973), the Supreme Court ordered the reinstatement of a
1089 || university student expelled for distributing an underground
1090 || newspaper sporting the headline "Motherfucker acquitted" on the
1091 || grounds that "the mere dissemination of ideas no matter how
1092 || offensive to good taste on a state university campus may not be
1093 || shut off in the name alone of conventions of decency." Id. at 670,
1094 || 93 S. Ct. at 1199. Nonetheless, the chilling effect caused by an
1095 || overly broad statute must be real and substantial and a narrowing
1096 || construction must be unavailable before a court will set it aside.
1097 || *Young v. American Mini Theaters*, 427 U.S. 50, 60 (1976). In our
1098 || case, plaintiffs argue that the UW Rule is unconstitutionally vague
1099 || for two reasons: (1) the phrase "discriminatory comments, epithets
1100 || or other expressive behavior" and the term "demean" are unduly
1101 || vague and (2) the rule does not make clear whether the prohibited
1102 || speech must actually create a hostile educational environment or
1103 || whether speaker must merely intend to create such an environment.
1104 || Upon review, it appears that the phrase and term referred to by
1105 || plaintiff are not unduly vague. However, the rule is ambiguous
1106 || since it fails to make clear whether the speaker must actually
1107 || create a hostile educational environment or if he must merely

1108 intend to do so. Thus, the phrase "discriminatory comments,
1109 epithets and expressive behavior" and the term "demean" do not
1110 appear to have vagueness difficulties. Nonetheless, as stated
1111 above, these terms fail to solve the UW Rule's overbreadth
1112 difficulties. The rule clearly reaches beyond the narrow confines
1113 of the fighting words doctrine. Although the above terms give
1114 students adequate notice of the speech which the rule prohibits
1115 and provides explicit standards for those who apply the rule, the
1116 terms nevertheless allow the rule to prohibit protected speech.

1117 83. A federal district court found the speech provisions of
1118 the University of Michigan's harassment code to be
1119 unconstitutionally overbroad. The code forbade "[a]ny behavior,
1120 verbal or physical, that stigmatizes or victimizes an individual
1121 on the basis of race, ethnicity, religion, sex, sexual orientation,
1122 creed... and that... creates an intimidating, hostile, or demeaning
1123 environment for educational pursuits, employment or participation
1124 in University[-]sponsored extra-curricular activities." In
1125 invalidating the speech code, the court observed that "[t]he
1126 Supreme Court has consistently held that statutes punishing speech
1127 or conduct solely on the grounds that they are unseemly, or
1128 offensive are unconstitutionally overbroad." *Doe v. University of*
1129 *Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989). In *Corry v. Leland*
1130 *Stanford Junior University*,, a California state court decided the
1131 first speech code case involving a private university. At issue

1132 was Stanford University's policy on "harassment by personal
1133 vilification," which prohibited speech "intended to insult or
1134 stigmatize an individual . . . on the basis of their sex, race,
1135 color, handicap, religion, sexual orientation, or national and
1136 ethnic origin." Again, the university argued that its policy
1137 targeted only fighting words. The court responded that the policy,
1138 even if limited to fighting words, did not prohibit all fighting
1139 words, but only those words based on the enumerated categories,
1140 violating the First Amendment's requirement of content neutrality.
1141 Secondly, the court held that the policy in fact prohibited more
1142 than just fighting words, rendering it unconstitutionally
1143 overbroad. No. 740309 (Cal. Super. Ct. Feb. 27, 1995) (slip op.).
1144 In *Booher v. Board of Regents*, a federal district court declared
1145 a sexual harassment policy to be both overbroad and vague for
1146 prohibiting, in pertinent part, expression which "unreasonably
1147 affects your status and well-being by creating an intimidating,
1148 hostile, or offensive work or academic environment." In
1149 particular, the policy "fail[ed] to draw the necessary boundary
1150 between the subjectively measured offensive conduct and
1151 objectively measured harassing conduct," giving one "the
1152 impression that speech of a sexual nature that is merely offensive
1153 would constitute sexual harassment because it makes the individual
1154 hearer uncomfortable to the point of affecting her status and well-
1155 being." This made the policy clearly capable of reaching protected

1156 speech and therefore overbroad. The court also found that the
1157 policy "fail[ed] to give adequate notice regarding precisely what
1158 conduct is prohibited" and "delegate[d] enforcement responsibility
1159 with inadequate guidance," rendering it unconstitutionally vague.
1160 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. Jul. 21, 1998). At issue
1161 in *DeJohn v. Temple University*, was a policy defining sexual
1162 harassment to include "expressive, visual, or physical conduct of
1163 a sexual or gender-motivated nature, when . . . such conduct has
1164 the purpose or effect of unreasonably interfering with an
1165 individual's work, educational performance, or status; or . . .
1166 has the purpose or effect of creating an intimidating, hostile, or
1167 offensive environment." 537 F.3d 301, 319 (3d Cir. 2008). The Third
1168 Circuit found the policy to be untenable for several
1169 reasons. First, it observed that under the policy's "purpose or
1170 effect" prong, "a student who sets out to interfere with another
1171 student's work, educational performance, or status, or to create
1172 a hostile environment would be subject to sanctions regardless of
1173 whether these motives and actions had their intended effect." As
1174 a result, the policy violated the requirement that a school "must
1175 show that speech will cause actual, material disruption before
1176 prohibiting it." Additionally, the policy's use of terms which
1177 were not clearly self-limiting, such as "hostile," "offensive,"
1178 and "gender-motivated," rendered it "sufficiently broad and
1179 subjective" that it "could conceivably be applied to cover any

1180 speech of a gender-motivated nature the content of which offends
1181 someone." Critically, "[t]his could include 'core' political and
1182 religious speech, such as gender politics and sexual morality."
1183 Thus, the Third Circuit concluded that "the policy provides no
1184 shelter for core protected speech." The court ultimately held the
1185 policy to be facially overbroad and permanently enjoined the
1186 university from re-implementing or enforcing the policy. As a
1187 strongly-worded federal circuit court opinion, *DeJohn* carries much
1188 significance and should clearly and powerfully convey the message
1189 to university administrators that speech codes are
1190 unconstitutional. In, *Roberts v. Haragan*, another case coordinated
1191 by FIRE, a federal district court considered a speech code banning
1192 the use of "physical, verbal, written or electronically
1193 transmitted threats, insults, epithets, ridicule or personal
1194 attacks" that are "personally directed at one or more specific
1195 individuals based on the individual's appearance, personal
1196 characteristics or group membership, including, but not limited
1197 to, race, color, religion, national origin, gender, age,
1198 disability, citizenship, veteran status, sexual orientation,
1199 ideology, political view or political affiliation." The court held
1200 the speech code to be facially overbroad in covering "much speech
1201 that, no matter how offensive, is not proscribed by the First
1202 Amendment." 346 F. Supp. 2d 853 (N.D. Tex. 2004). ("[A] party [may]
1203 challenge an ordinance under the overbreadth doctrine in cases

1204 where every application creates an impermissible risk of
1205 suppression of ideas, such as an ordinance that delegates overly
1206 broad discretion to the decisionmaker, and in cases where the
1207 ordinance sweeps too broadly, penalizing a substantial amount of
1208 speech that is constitutionally protected." (citations omitted));
1209 *Cox v. Louisiana*, 379 U.S. 536, 551 (1965). The overbreadth
1210 doctrine provides that "a law may be invalidated as overbroad if
1211 'a substantial number of its applications are unconstitutional,
1212 judged in relation to the statute's plainly legitimate sweep.'"
1213 *United States v. Stevens*, 559 U. S. 460, 473 (2010) (quoting
1214 *Washington State Grange v. Washington State Republican Party*, 552
1215 U. S. 442, 449, n. 6 (2008).

1216 84. In any forum, §230 is unconstitutionally vague,
1217 overbroad and viewpoint discriminatory on its face under Part I,
1218 Article 22 of the New Hampshire Constitution and the First
1219 Amendment of the United States Constitution as it authorizes and
1220 encourages arbitrary and discriminatory enforcement, enabling
1221 State Actors to administer a policy on the basis of impermissible
1222 factors. As a prior restraint that regulates speech based on its
1223 content, §230 is presumptively unconstitutional. §230 is also
1224 unconstitutionally vague and overbroad because no one can decipher
1225 its meaning, it permits and encourages arbitrary and
1226 discriminatory enforcement, and it lacks any plainly legitimate
1227 sweep. Moreover, §230 is unconstitutionally overbroad because a

1228 || substantial number of its applications are unconstitutional when
1229 judged in relation to a purported legitimate sweep that reaches
1230 accusations of moral turpitude and laws must provide explicit
1231 standards for those who apply them. §230 does not.

1232 85. §230, because it is so loosely constrained, vague or
1233 broad, it authorizes or even encourages arbitrary and
1234 discriminatory enforcement," *State v. MacElman*, 154 N.H. 304 (N.H.
1235 2006), and is, therefore, unconstitutionally vague. Accordingly,
1236 the Court should hold that, on its face, §230 violates the right
1237 to free speech guaranteed by Part I, Article 22 of the State
1238 Constitution. *David Montenegro v. New Hampshire Division of Motor*
1239 *Vehicles*, 2012-624 (N.H. 2014).

1240 J. Does §230 provide explicit standards to prevent
1241 arbitrary or discriminatory enforcement for those who apply it?

1242 86. A statute must give adequate warning of the conduct which
1243 is to be prohibited and must set out explicit standards for those
1244 who apply it. "No one may be required at the peril of life, liberty
1245 or property to speculate as to the meaning of penal statutes. All
1246 are entitled to be informed as to what the State commands or
1247 forbids." *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S. Ct.
1248 618, 619, 83 L. Ed. 888 (1939). These considerations apply with
1249 particular force where the challenged statute acts to inhibit
1250 freedoms affirmatively protected by the constitution. *Smith v.*
1251 *Goguen*, 415 U.S. 566, 573, 94 S. Ct. 1242, 1247, 39 L. Ed. 2d 605

1252 (1974). A regulation may be invalidated as unconstitutionally
1253 vague when "it authorizes or even encourages arbitrary and
1254 discriminatory enforcement." MacElman, 154 N.H. at 307. However,
1255 the chilling effect caused by an overly vague statute must be both
1256 real and substantial, *Young v. American Mini-Theatres*, 427 U.S.
1257 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976).

1258 87. As the Supreme Court has stated, "if arbitrary and
1259 discriminatory enforcement is to be prevented, laws must provide
1260 explicit standards for those who apply them." Grayned, 408 U.S. at
1261 108. In particular, "where a vague statute abuts upon sensitive
1262 areas of basic First Amendment freedoms, it operates to inhibit
1263 the exercise of those freedoms." Id. at 109 (quotations and
1264 brackets omitted). "Uncertain meanings inevitably lead citizens to
1265 steer far wider of the unlawful.

1266 88. Because §230's "indecent materials" standard regulates
1267 Citizens speech and Commercial entities and is not susceptible of
1268 an objective definition because the words or materials they
1269 suppress could be endless and mean many things to many persons,
1270 the restriction grants computer networks the power to deny ANY
1271 material because it offends particular Congressional officials'
1272 subjective idea of what is "good taste", and should be invalidated
1273 as unconstitutionally vague as "it authorizes or even encourages
1274 arbitrary and discriminatory enforcement." *Supreme Court of New*
1275 *Hampshire Grafton Nov 1, 2006* 154 N.H. 307 (N.H. 2006).

1276 K. Are there less restrictive means available, therefore
1277 making §230 unconstitutional?

1278 89. If a less restrictive alternative would serve the
1279 Government's purpose, the legislature must use that alternative.
1280 *Reno*, 521 U.S., at 874 ("[The CDA's Internet indecency provisions']
1281 burden on adult speech is unacceptable if less restrictive
1282 alternatives would be at least as effective in achieving the
1283 legitimate purpose that the statute was enacted to serve"); Sable
1284 Communications, *supra*, at 126 ("The Government may ... regulate the
1285 content of constitutionally protected speech in order to promote
1286 a compelling interest if it chooses the least restrictive means to
1287 further the articulated interest"). To do otherwise would be to
1288 restrict speech without an adequate justification, a course the
1289 First Amendment does not permit.

1290 90. New Hampshire's less restrictive laws already prohibit
1291 and provide for punishment with regards to speech in public places,
1292 such as: N. H. RSA 644:2. Disorderly Conduct which restricts "Words
1293 which are likely to provoke a violent reaction", in "Public
1294 places"; N. H. RSA 644:4, which restricts harassment by any method
1295 of communication; N. H. RSA 644:9, which restricts violations of
1296 other persons privacy; N. H. RSA 644:11, restricts criminal
1297 defamation. All which taken alone or collectively, these laws would
1298 be less restrictive than §230.

1299 91. Similarly, there are already less restrictive Federal
1300 laws that prohibits and provides for punishment and accomplish
1301 exactly what §230 looks to accomplish, such as: 47 U.S. Code § 223
1302 prohibits and provides for punishment for using telecommunication
1303 devices for communications that are obscene, abusive, harassing or
1304 threatening; 47 U.S. Code § 231, which prohibits commercial
1305 communication or material on the world wide web that would be
1306 harmful to minors; 18 U.S. Code § 1465; for whoever knowingly
1307 produces with the intent to...distribute, or transmit.... or uses ...
1308 an interactive computer service... for the purpose of sale or
1309 distribution of any obscene, lewd, lascivious, or filthy book,
1310 pamphlet, picture, film, paper, letter, writing, print,
1311 silhouette, drawing, figure, image, cast, phonograph recording,
1312 electrical transcription or other article capable of producing
1313 sound or any other matter of indecent or immoral character; and 18
1314 U.S. Code § 1470 restricts and provides for punishment for the
1315 Transfer of obscene material to minors.

1316 92. There are already plausible, less restrictive
1317 alternatives to §230 in both State and Federal laws and for this
1318 reason, §230 should be unconstitutional. If the FCC is barred by
1319 law from censoring freedom of speech that its broadcast. It doesn't
1320 make sense that the FCC is barred, but that it's ok that §230
1321 censors speech on computer networks?

1322 93. Anarchy was inevitable where " the State is incapable of
1323 protecting its citizens in their rights of person and property. S.
1324 Rep. No 52-1280 (1892).

1325 WHEREFORE, Plaintiff invites this Court and the United States
1326 Attorney General to stop the oppression of American's free speech
1327 in public forums and find Title 47 U.S. Code § 230 unconstitutional
1328 under both the U.S. Constitution and the New Hampshire
1329 Constitution.

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1332 | Respectfully,

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S. Verogna
/s/ Plaintiff, Anonymously as Sensa Verogna
SensaVerogna@gmail.com

CERTIFICATE OF SERVICE

1346 I hereby certify that on this 6th day of August 2020, the foregoing
1347 document was made upon the Defendant, through its attorneys of
1348 record to Jonathan M. Eck jeck@orr-reno.com and Julie E. Schwartz,
1349 Esq., JSchwartz@perkinscoie.com, and to the United States Attorney
1350 General as noted above.